

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	
)	
ONE 1993 BMW 325I)	Civil Action No. 05-10305-MLW
VEHICLE IDENTIFICATION NUMBER)	
WBABF431XPEK09579 ¹ ;)	
REGISTRATION NUMBER 40RH40)	
)	
Defendant.)	

UNITED STATES' MOTION FOR ENTRY OF DEFAULT

The United States of America, by and through its attorney Michael J. Sullivan, United States Attorney for the District of Massachusetts, hereby requests that a default be entered pursuant to Rule 55(a) of the Federal Rules of Civil Procedure against Michael Mills, and all other persons claiming an interest in the defendant property, described herein as:

One 1993 BMW 325I vehicle identification
number WBABF431XPEK09579; registration
number 40RH40;

(referred to as the "Defendant Property"), for failure to file an answer or otherwise to defend, as provided for in Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims and 18 U.S.C. §983. The failure to submit a verified claim justifies the entry of default. See United States v. One-Sixth Share Of James J. Bulger In All Present And Future Proceeds Of Mass Millions Lottery Ticket No. M246233, 326 F.3d 36, 40-41 (1st Cir. 2003)(failure to

¹ The original caption of this case inadvertently omitted one letter from the vehicle identification number. The current caption contains the corrected vehicle identification number.

file a timely verified claim disqualifies putative claimant from participating in civil forfeiture action).

In support of this application, the United States submits the attached Affidavit.

Respectfully submitted,

UNITED STATES OF AMERICA
By its attorneys,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/Jennifer H. Zacks
Jennifer H. Zacks
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Dated: May 19, 2005

SO ORDERED AND ALLOWED

MARK L. WOLF
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

I, Jennifer H. Zacks, Assistant U.S. Attorney, hereby certify that a true copy of the foregoing Motion for Entry of Default, as well as the Affidavit in Support of Motion for Entry of Default, was served upon Gerard R. LaFlamme, Jr., Esquire as Counsel for Michael Mills, 114 Kenoza Avenue, Haverhill, MA 01830, by first class mail, postage prepaid.

/s/Jennifer H. Zacks
Assistant U.S. Attorney

May 19, 2005

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UNITED STATES OF AMERICA,)	
Plaintiff,)	
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v.)	Civil Action No. 05-10305-MLW
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ONE 1993 BMW 325I)	
VEHICLE IDENTIFICATION NUMBER)	
WBABF431XPEK09579 ¹ ;)	
REGISTRATION NUMBER 40RH40)	
)	
Defendant.)	

AFFIDAVIT IN SUPPORT OF
MOTION FOR ENTRY OF DEFAULT

I, Jennifer H. Zacks, state under oath as follows:

1. I am an Assistant United States Attorney. I represent the plaintiff, the United States of America, in this case. This is an action in Rem for forfeiture of the following defendant property:

One 1993 BMW 325I vehicle identification
number WBABF431XPEK09579; registration
number 40RH40;

(referred to as the "Defendant Property"). This is a civil forfeiture action, and, accordingly, is governed by the procedures set forth in the Federal Rules of Civil Procedure and in Rule C of the Supplemental Rules of Certain Admiralty and Maritime Claims.

2. The Defendant Property is subject to forfeiture pursuant to 21 U.S.C. §881(a)(4), in that the defendant property constitutes property used, or intended to be used, in any manner or part, to

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commit, or to facilitate the commission of a criminal drug violation pursuant to 21 U.S.C. §§841 and/or 846.

3. The Verified Complaint for Forfeiture In Rem (the "Complaint") was filed in the United States District Court on or about February 15, 2005.

4. This Court found probable cause that the Defendant Property is subject to forfeiture to the United States, and issued a Warrant and Monition, on or about February 28, 2005, directing the United States Marshals Service ("USMS") to give notice to all persons concerned that a Complaint in Rem had been filed, and to arrest and retain the Defendant Property in its custody.

5. Notice of the United States' Complaint was published, in accordance with the Warrant and Monition, in the Boston Herald newspaper on March 15, March 22, and March 29, 2005. A copy of the USMS Process Receipt and Return form and the published notice are attached as Exhibit A.

6. A copy of the Verified Complaint and a certified copy of the Warrant and Monition were sent by certified mail to Michael Mills, 25 Verona Street, Lynn, MA 01904 on or about March 22, 2005, and via his attorney, Gerard R. LaFlamme, Jr., Esquire, 114 Kenoza Avenue, Haverhill, MA 01830, on or about March 16, 2005. Copies of the USMS Process Receipt and Return forms are attached as Exhibits B and C respectively. Michael Mills did not file either a verified claim or answer to the Complaint.

7. Under Supplemental Rule C(6) and 18 U.S.C. §983(a)(4), any person asserting an interest in the Defendant Property was required to file a claim not later than 30 days after the date of service of the Complaint or, as applicable, not later than 30 days after the date of final publication of notice of the filing of the Complaint. In addition, any person asserting an interest in the Defendant Property was required to file an answer to the Complaint no later than 20 days after the date of the filing of any claim.

8. As of today's date, May 19, 2005, no claims to the Defendant Property or answers to the Complaint have been filed and the time for filing such claims and answers has expired.

9. To the best of my knowledge, and upon information and belief, neither Michael Mills, nor anyone else with an interest in the Defendant Property, is in the military service of the United States, is an infant, or is incompetent.²

Signed under the pains and penalties of perjury this 19th day of May, 2005.

/s/ Jennifer H. Zacks
Jennifer H. Zacks
Assistant U.S. Attorney

² In order to determine Michael Mills' military status, the United States searched the Department of Defense Manpower Data Center using Michael Mills' name and social security number.